IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

WP(C).No. 21134 of 2006(N)

PETITIONER:

KRISHNA PILLAI,
S/O.SIVARAMA PILLAI, AGED 66 YEARS,
KOCHUVEETTIL, CHINGOLIMURI, CHINGOLI VILLAGE.

BY ADV. SRI.K.N. CHANDRABABU

RESPONDENTS:
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1. STATE OF KERALA,
   REP.BY THE DISTRICT COLLECTOR, ALAPPUZHA
   (THE SPL.TAHSILDAR (LA NO.III) S.T.P.S.,
   HARIPAD).

2. N.T.P.C. LTD,
   REP.BY THE POWER OF ATTORNEY HOLDER
   SRI.ARUN LODGE, S/O.SRI.C.R. LODGE,
   DY.GENERAL MANAGER FOR KAYAMKULAM STPP.

   R1 BY GOVERNMENT PLEADER SHRI P.K. BABU.
   R2 BY ADV. SRI.B.S. KRISHNAN (SR.)
   ADV. SRI.K. ANAND (A.201)
   ADV. SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext. P1	:	JUDGMENT DATED 23.07.2003 PASSED BY THE PRINCIPAL SUBORDINATE JUDGE'S COURT, ALAPPUZHA.
Ext. P2	:	DECREE DATED 23.07.2003 PASSED BY THE PRINCIPAL SUBORDINAGE JUDGE'S COURT, ALAPPUZHA.

/TRUE COPY/

P.A. TO JUDGE

K.T. SANKARAN, J.

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W.P.(C) No. 21134 OF 2006

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Dated this the 13th December , 2006

J U D G M E N T

The Writ Petition is filed challenging Exts. P1 and P2, judgment and decree in L.A.R.No.81 of 2002 passed by the Sub Court, Alappuzha dismissing the Land Acquisition Reference on the ground that the application for reference was belatedly made by the petitioner before the Land Acquisition Officer and therefore the reference is barred by limitation.

2. The award was passed by the Land Acquisition Officer on 19.11.1990. Notice under section 12(2) of the Land Acquisition Act was issued on 15.12.1990 and it was received by the petitioner/claimant on 18.12.1990. The claimant filed an application under section 18 of the Land Acquisition Act for reference on 05.01.1991. The reference court held that the proceedings would indicate that the petitioner was present before the District Collector when the award was passed and therefore as per the

proviso to section 18(2) of the Land Acquisition Act, he was bound to file an application for reference within six weeks from the date of award. It was also held that the reference application having been made after six weeks from the date of award, the reference was barred by limitation.

3. The Registry expressed a doubt as to whether a Writ Petition could be filed challenging the judgment of a reference court and it was of the view that a Land Acquisition Appeal is the proper remedy. Direction was issued to the Registry to number the Writ petition. It is submitted by the counsel for the petitioner that in **Georgekutty vs. State of Kerala** (**2001 (3) KLT 623**), it was held that the reference court need not consider the question of limitation and that it is expected to answer the question referred to it . Counsel submitted that since the reference court disposed of the case ignoring the decision in **Georgekutty vs. State of Kerala,** the petitioner can straightaway file a Writ Petition invoking supervisory jurisdiction of this court under section 227 of the Constitution of India and that the petitioner need not file a Land Acquisition Appeal paying huge court fee to correct a mistake which was committed by the court. I am

inclined to agree with the submission made by the counsel for the petitioner . The Writ Petition was directed to be numbered and it was admitted. For the reasons mentioned below it could be seen that the mistake was committed by the court . A party shall not be put to trouble to pay huge court fee to correct an obvious mistake committed by the court. Therefore, I am inclined to hold that the Writ Petition is maintainable.

4. Now let us see whether the view taken by the Land Acquisition Court is correct. Section 18 of the Land Acquisition Act reads thus:

> *"18. Reference to Court: (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*
>
> *(2) The application shall state the grounds on which objection to the award is taken.*
>
> *Provided that every such application shall be made,-*
>
> *(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;*

> *(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2) , or within six months from the date of the Collector's award, whichever period shall first expire."*

Section 12(2) of the Act provides that the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award was made. It is not disputed that a notice under section 12(2) was issued by the Collector on 15.12.1990 and it was served on the petitioner on 18.12.1990. The petitioner contends that he was not present or represented before the Collector at the time when the award was made. When a notice under section 12(2) of the Act is issued, it pre-supposes that the person interested was not present personally or by his representative when the award was made. If so, clause (a) of the proviso to section 18 (2) of the Act would have no application and clause (b) of the proviso to section 18 (2) would get attracted. There is no dispute, if clause (b) were to apply, the reference application was filed within time.

5. Section 19(1) of the Act provides that in making the reference,

the Collector shall state, for the information of the court, the particulars mentioned in clause (a) to (d) therein. Section 19(2) states that a schedule giving the particulars of the notices served upon the parties shall be attached to the statement furnished under section 19 (1) of the Act. Section 20 of the Act states that on receiving a reference, the court shall issue notice specifying the date on which the court will proceed **"to determine the objection"** and directing appearance of the party on that date. Section 21 of the Act states that the scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection. Rule 13 of the Land Acquisition (Kerala) Rules provides that immediately after the award is made, the Land Acquisition Officer shall issue a notice of award in Form No. 10(b). The said notice shall be served on the awardees as well as other persons interested in the land in the manner prescribed in section 45. Rule 16 of the Land Acquisition (Kerala) Rules reads thus:

> *"16. Reference to Court:- Reference to Court under section 18 or sub section (3) of section 28A or section 30 of the Act shall be made by the Land Acquisition Officer in Form No.15 supported by information in the prescribed schedule in Form Nos. 16 and 17.*
>
> *Provided that in the case of application*

presented to the Land Acquisition Officer for reference to Court it shall be referred within a period of six months from the date of receipt of the application."

6. Form 15 of the Land Acquisition (Kerala) Rules, viz., Form for Reference to Court, contains provision for furnishing several particulars to the reference court in respect of the land, trees, buildings, compensation, date of possession, nature of land, extent, damages, solatium, interest etc. Form 16 appended to the Rules is a Schedule of Information for Reference to Courts, which provides for furnishing information regarding the date of statement, date of receipt, abstract of statement and remarks. Form 17 of the Rules is a form of Schedule of Information for Reference to Courts, which provides for furnishing information regarding notices under sections 9(3), 10 and 12(2) of the Act and the date when it was issued, when it was received and how it was served. There is no column in Form No. 17 for furnishing information to the reference court as to when the application for reference was received.

7. When period of limitation is provided for making an application

for reference and an authority is empowered to make a reference, it is that authority which shall decide whether the application for reference was validly made and whether it was made within the period of limitation. If he makes a reference to the reference court under section 18 of the Act, the reference court need only decide the points for consideration as provided under the Act. The reference court shall have no jurisdiction to consider the question whether the reference application was submitted to the Land Acquisition Officer within the period of limitation. Such an enquiry is beyond the scope of enquiry by the reference court. The purpose of reference is to resolve the disputes as to the amount of compensation, whether the person is entitled to get apportionment of compensation etc. The power to decide that question is conferred only on the reference court and not on the Land Acquisition Officer. However, the jurisdiction to decide the question as to whether the reference application was submitted within the time prescribed, is on the Land Acquisition Officer and not on the Court. Therefore, the court below was not justified in embarking upon an enquiry as to whether the reference application was made within the prescribed time, whether the claimant was present before the Collector

and whether clause (a) or (b) of the 18(2) of the Act applies. It is not the duty of the claimant to satisfy the reference court that he made the application for reference within the period of limitation. He need satisfy only the Land Acquisition Officer that the application was submitted within time. Reference court has no jurisdiction to raise an issue on that point or to decide the same or to dismiss the Reference Case on the ground that the reference application was submitted beyond the prescribed period of limitation. The particulars to be furnished by the Land Acquisition Officer to the reference court in Forms 15,16 and 17 and the conspicuous absence therein regarding the information as to when the application for reference was made, would show that the reference court need not be informed on what date the application for reference was made. Period of limitation can be computed only if that date is taken into account. Reference court is not expected to search the records, find out the date on which the application for reference was submitted and thereafter arrive at a finding whether the application was filed within the prescribed period of limitation. I am in respectful agreement with the view taken by the learned single Judge in **Georgekutty vs. State of Kerala.**

8. In the result, I hold that the reference court was not justified in passing Ext. P1 judgment and Ext.P2 decree, dismissing the reference on the ground of limitation. Exts. P1 and P2 are set aside. The reference court shall dispose of the Land Acquisition Reference on the merits.

The Writ Petition is allowed as above.

K.T. SANKARAN,
JUDGE.

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